

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

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IN RE: EQUIFAX, INC., ) MDL Docket No. 2800  
CUSTOMER DATA SECURITY ) No.: 1:17-md-02800-TWT  
BREACH LITIGATION )  
 ) CONSUMER ACTIONS  
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**APPLICATION OF STEVEN F. MOLO FOR APPOINTMENT  
TO THE CONSUMER PLAINTIFFS' STEERING COMMITTEE**

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## **INTRODUCTION**

Steven F. Molo of MoloLamken LLP respectfully requests the opportunity to serve this Court as part of the leadership vindicating the rights of the Consumer Class in the Equifax Inc. consumer data security breach litigation.<sup>1</sup>

Mr. Molo is a founding partner of MoloLamken, a premier national litigation boutique. He leads a team of smart, accomplished litigators – trial lawyers and appellate advocates – with years of experience before judges, juries, and courts of appeals, including the Supreme Court of the United States, that has achieved victories worth billions of dollars. *See* [www.mololamken.com](http://www.mololamken.com). Mr. Molo is committed to being fully engaged, personally, on behalf of the class. Mr. Molo also believes in keeping staffing lean; however, should additional resources be beneficial from time to time, other members of the MoloLamken team will be available to assist in the representation. The firm's roster includes one of the

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<sup>1</sup> Mr. Molo is a member of, and fully supports, the Joint Leadership Application of the Susman Group, led by Stephen D. Susman. Should this Court decide to name individual lawyers to leadership positions instead of selecting one or more groups, Mr. Molo requests that he, supported by MoloLamken, be appointed to a position on the Plaintiffs' Steering Committee.

nation's leading Supreme Court advocates; a former federal prosecutor who investigated and prosecuted cybercrimes and identity theft; and the former co-head of the class-actions group at a leading defense firm. This case promises to be a hard-fought battle. Mr. Molo can provide a unique combination of practical courtroom advocacy and top-level legal thinking to obtain the relief that Consumer Class Members deserve.

Mr. Molo is committed to obtaining that relief quickly. He and the firm have a track record of cutting through the unimportant and moving cases swiftly from complaint to trial. He achieves such results using project management and a highly collaborative style with small teams of experienced lawyers. Mr. Molo and MoloLamken frequently partner with other firms in representing individual clients or a class and would be honored to have the opportunity to do so here.

### **REASONS FOR APPOINTMENT**

The “main criteria for … appointments” to the Plaintiffs’ Steering Committee are “professional experience in this type of litigation”; “access to sufficient resources to advance the litigation in a timely manner”; “willingness and ability to commit to a time-consuming process”; and “ability to work cooperatively with others.” Dkt. 23 ¶6. Applicants must also meet the criteria set forth in Federal Rule of Civil Procedure 23(g). *See* Dkt. 87 at 5. Mr. Molo meets each of

those criteria, as demonstrated not only by his past experience, but also by the work that he and his team have already dedicated to this case.

## **I. PROFESSIONAL EXPERIENCE AND RECOGNITION**

Mr. Molo and MoloLamken have deep experience in class actions and complex litigation. That experience extends to representing both plaintiffs *and* defendants – which gives Mr. Molo unique insight into the strategic and tactical issues the Consumer Plaintiffs will face in the course of this litigation.

### **A. About Steven Molo and MoloLamken**

Success for the Consumer Class will depend on counsel's ability not only to assemble and analyze a complex, technical set of facts, but also to understand and apply a nuanced and evolving body of law to those facts. Mr. Molo and MoloLamken are well suited to the task.

MoloLamken is a law firm focused exclusively on representing clients in complex litigation. It handles civil, criminal, and regulatory matters, as well as appeals, across the United States. The firm's founding partners, Steven Molo and Jeffrey Lamken, developed national reputations based on their courtroom successes while partners at large, full-service firms where they held leadership positions. They formed MoloLamken in October 2009 to break the mold of big law firms, trading the large, highly-leveraged staffing model for small teams of

smart, experienced lawyers. Many of the partners developed courtroom skills while serving in the government, and associates join the firm after completing one or more federal judicial clerkships. That means clients receive meaningful representation at each stage of litigation – whether it is mapping out the winning case strategy, crafting a powerful brief, taking a key deposition, or conducting a successful cross-examination at trial.

The firm and its lawyers have earned numerous accolades. *The National Law Journal* heralded the firm’s “fanatical” preparation of its cases in naming MoloLamken to its “Litigation Boutiques Hot List” in 2014 and 2016 and “Appellate Hot List” in 2017. *See* App. at 6-11. Likewise, *Benchmark Litigation* highlighted MoloLamken’s “courtroom savvy,” “brilliant lawyers,” and “the best brief writing teams you can find.” *See* App. at 23-25. *Benchmark Litigation* also named MoloLamken a “Top 10 Litigation Boutique in America” in 2017 and recently shortlisted MoloLamken for its 2018 “Boutique Firm of the Year” award. Others have highlighted the firm’s “real trial prowess” (*Legal 500*), and its “meticulous attention to detail,” and its knack “for pushing cases toward trial, where its stars can shine” (*Vault.com*). *See* App. at 21. MoloLamken has been consistently ranked in the top ten litigation boutiques nationwide by *Vault*. *See id.*

### **1. *Steven F. Molo***

Mr. Molo regularly tries civil and criminal cases before judges and juries throughout the country. His skills as an advocate have been widely praised in the media by clients and peers in numerous lawyer listing publications. Chambers and Partners calls him “fantastic in the courtroom”; a “fabulous courtroom litigator who lights up the room with his presence”; “one of the most talented lawyers in [New York] [C]ity”; “very bright, imaginative and creative in his approach to problems”; and “an exceptional lawyer.” *Benchmark Litigation* – which named him one of the top 100 Trial Lawyers in America – calls him “an outstanding advocate and fearless in court.” *See* App. at 25.

For the past eight years, Mr. Molo has been named to *Lawdragon*’s list of the 500 Leading Lawyers in America. He has been recognized by *Super Lawyers*, *The Best Lawyers in America*, *Chambers USA*, *Benchmark Litigation*, *Euromoney*, and *Legal 500*, which includes him on its elite list of Leading Trial Lawyers. *See* App. at 29.

In addition to getting good results, Mr. Molo is known for advancing cases quickly. *Benchmark Litigation* quoted a client’s observation that MoloLamken lawyers are “much more productive” than those in other firms, and another client’s

observation that Mr. Molo is “focused and resolute” and “honored every promise made.” *See App.* at 25.

**2. *Jeffrey A. Lamken***

MoloLamken co-founder Jeffrey Lamken is a highly accomplished appellate lawyer who has argued 23 cases and briefed many more – including class actions – before the Supreme Court of the United States. Mr. Lamken served for six years as an Assistant to the Solicitor General of the United States. He also served as law clerk to the Honorable Sandra Day O’Connor of the Supreme Court of the United States and to the Honorable Alex Kozinski of the United States Court of Appeals for the Ninth Circuit. He has handled matters in virtually all of the federal courts of appeals and many state appellate courts. Mr. Lamken also briefs and argues critical motions in significant trial matters. *See App.* at 34.

Chambers and Partners calls Mr. Lamken “really outstanding”; “incredibly knowledgeable and quick to understand issues”; “a fierce advocate”; and “a joy to work with.”

**3. *Megan Cunniff Church***

Partner Megan Cunniff Church is a highly accomplished trial lawyer who represents clients in high-stakes civil litigation and white collar criminal and regulatory matters. Immediately prior to joining MoloLamken, Ms. Church served

as Deputy Chief of the Financial Crimes Section of the United States Attorney's Office for the Northern District of Illinois. In nearly a decade as an Assistant United States Attorney, she investigated and prosecuted cases involving cybercrime and identity theft, as well as business crime and financial fraud. Ms. Church served as a law clerk to the Honorable William J. Bauer of the United States Court of Appeals for the Seventh Circuit and the Honorable Joan H. Lefkow of the United States District Court for the Northern District of Illinois. *See App.* at 39.

**4. *Thomas J. Wiegand***

Partner Thomas Wiegand is a trial lawyer who served as the co-head of the Class Actions Subgroup at Winston & Strawn prior to joining MoloLamken. Mr. Wiegand has represented both plaintiffs and defendants in numerous class action lawsuits, and he has experience litigating almost all procedural and legal aspects of class action practice. *See App.* at 40.

**5. *Justin B. Weiner***

Partner Justin Weiner's practice focuses on complex business litigation. He also has extensive experience in appellate litigation. Prior to joining MoloLamken, Mr. Weiner served as a law clerk to the Honorable Frank H. Easterbrook of the United States Court of Appeals for the Seventh Circuit and to the Honorable

Milton I. Shadur of the United States District Court for the Northern District of Illinois. *See* App. at 42.

#### **B. Success for Plaintiffs and Plaintiff Classes**

Mr. Molo and MoloLamken have worked to achieve maximum value for plaintiffs and class members in the past, and will do the same in this case. The firm's wide-ranging experience includes serving as lead counsel for objectors in the landmark case *In re: National Football League Players' Concussion Injury Litigation*, Nos. 2:12-md-02323, 2:14-cv-00029 (E.D. Pa.). In that case, the court preliminarily approved a settlement that was heavily negotiated over a period of approximately sixteen months under the supervision of a retired federal judge acting as a mediator. Proceeding on a wholly contingent fee basis, Mr. Molo and MoloLamken mounted an extensive legal and factual attack on the fairness and adequacy of the settlement.

MoloLamken worked with eleven experts to submit thirteen declarations to the court – all without seeking any delay of the court's schedule. Indeed, the firm filed its comprehensive objection a week *before* the court's deadline. In total, MoloLamken submitted approximately 1,300 pages of briefing and 457 exhibits. The court not only requested that Mr. Molo take the lead in making arguments for as many as 114 of the objectors at the fairness hearing, but also asked that he

organize brief presentations of other objectors' counsel. The plaintiff class was represented by some of the nation's leading mass tort lawyers, and the NFL was represented by legal powerhouses Paul Weiss and Dechert.

Following the hearing, the court issued an opinion stating that certain modifications advocated by MoloLamken were needed to make the settlement compliant with Federal Rule of Civil Procedure 23(e). Among other things, the court adopted MoloLamken's argument that the value of the recovery should be significantly increased for as many as 2,300 class members who had played in NFL Europe. *See In re: Nat'l Football League Players' Concussion Litig.*, Nos. 2:12-md-02323, 2:14-md-00029 (E.D. Pa. Feb. 2, 2015) (order requiring changes to proposed settlement), ECF No. 6479. As a result, the settlement was modified and its value increased by approximately \$120 million.<sup>2</sup> *See* Expert Decl. of

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<sup>2</sup> The firm's efforts also resulted in a clarification on the question of jurisdiction over a petition under Federal Rule of Civil Procedure 23(f). *See In re: Nat'l Football League Players' Concussion Litig.*, 775 F.3d 570, 578 (3d Cir. 2014). The ruling was so significant it prompted action by the Advisory Committee on Civil Rules. *See* Mem. from Hon. John D. Bates to Hon. Jeffrey S. Sutton (May 12, 2016). Its proposal was approved by the Judicial Conference and submitted to

Joseph J. Floyd at 3, *In re: Nat'l Football League Players' Concussion Litig.*, Nos. 2:12-md-02323, 2:14-md-00029 (E.D. Pa. Mar. 27, 2017), ECF No. 7366-1.

MoloLamken also recently obtained a victory for class action plaintiffs in *Christine Asia Co. Ltd. v. Ma*, --- F. App'x ---, 2017 WL 6003340 (2d Cir. Dec. 5, 2017), a securities action based on fraudulent representations and omissions in connection with the IPO of the Alibaba Group, the largest IPO in history. Lead plaintiffs' counsel sought out MoloLamken's appellate team to challenge a district court's dismissal of the complaint under Federal Rule of Civil Procedure 12(b)(6). MoloLamken briefed and argued the appeal, and convinced the United States Court of Appeals for the Second Circuit to reverse. As a result, it restored claims of investors worth approximately \$33 billion. *See id.* at \*2-3. Similarly, in *In re Vivendi, S.A. Securities Litigation*, 838 F.3d 223 (2d Cir. 2016), lead plaintiffs' counsel partnered with MoloLamken, which briefed and argued the appeal in the Second Circuit, to defend a \$50 million judgment. Again, MoloLamken succeeded, persuading the Second Circuit to find for the class. *See id.* at 265.

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the Supreme Court for approval. *See* Mem. from Rebecca A. Womelford to Scott S. Harris (Oct. 4, 2017), [http://www.uscourts.gov/sites/default/files/2017-10-04-Supreme-Court-Package\\_0.pdf](http://www.uscourts.gov/sites/default/files/2017-10-04-Supreme-Court-Package_0.pdf).

MoloLamken has also secured relief for large groups of plaintiffs outside the context of class actions. For example, MoloLamken has acted for trustees of residential mortgage-backed securities trusts that were harmed by the failure of originators of faulty mortgage loans to honor their contractual obligations. MoloLamken has – in just three years of litigation – recovered hundreds of millions of dollars for the investors in those trusts.

**II. MR. MOLO HAS A LONG TRACK RECORD OF WORKING COOPERATIVELY WITH OTHERS, INCLUDING IN THIS LITIGATION**

Mr. Molo and MoloLamken pride themselves on working cooperatively with other law firms as co-counsel. Indeed, a large percentage of Mr. Molo's work involves partnering with other lawyers. The firm is frequently called on to assist other counsel when it becomes apparent that a case may go to trial or there is an adverse ruling in the trial court. The firm has also brought cases as co-counsel with other leading firms. And the firm prides itself on its collegiality in dealing with opposing counsel.

From the earliest stages of this litigation, Mr. Molo has collaborated with Stephen D. Susman of Susman Godfrey and numerous other plaintiffs' counsel (including the members of the Susman Group), and has also worked with counsel for Equifax. Together with Mr. Susman, Mr. Molo has worked to recruit and partner with a diverse group of leading plaintiff-side class action attorneys within

the Susman Group who represent plaintiffs across the country. Additionally, Mr. Molo has already laid considerable groundwork to advance the Consumer Plaintiffs' case quickly – as soon as leadership appointments are made.

At the outset of this litigation, Mr. Molo jointly drafted the *LaGasse et al. v. Equifax Inc. et al.* complaint with Mr. Susman. Mr. Molo communicated with defense counsel at King & Spalding early on, offering to help coordinate an efficient approach to case management. Mr. Molo also provided King & Spalding with protective orders from other data breach cases. *See* App. at 17. On September 26, 2017, Mr. Molo sent Equifax a detailed document preservation letter drawn from an initial set of document requests and interrogatories he had prepared. *See* App. at 13-16. In October, Mr. Molo shared the document preservation letter with all other plaintiffs' counsel. *See* App. at 12. Mr. Molo collaborated with the Susman Group in the MDL briefing. In December, Mr. Molo and his team also participated in conference calls with other plaintiffs' counsel and with defense counsel to facilitate the drafting of Case Management Order No. 2.

Mr. Molo coordinated outreach to plaintiffs within the Susman Group to identify additional claims for an amended complaint. To date, MoloLamken and the Susman Group have conducted extensive legal research to assemble the most powerful claims of any complaint – including claims that do not appear to be

asserted by any other law firm – for inclusion in the consolidated complaint after leadership is appointed. For instance, class members in numerous states had statutory credit “freezes” in effect at the time of the data breach. Many of the state-specific credit “freeze” statutes entitle consumers to considerable statutory damages for the release of their credit information (including the data stolen in the data breach) by credit reporting agencies while a “freeze” is in place. Based on a review of other complaints filed in this litigation, other firms have not done the independent legal research to identify this substantial source of damages to which many class members are entitled. This case is certain to present many other substantial issues, such as class certification, damages, standing, and injury, which will require the highest quality legal briefing on behalf of consumers.

Along with other efforts of the Susman Group, MoloLamken joined Susman Godfrey in hiring leading experts in cybersecurity, identity theft, and privacy to make the most compelling case on behalf of the consumers. Mr. Molo has committed his firm’s financial resources in support of those efforts, already advancing substantial fees to the experts. The leading experts MoloLamken and Susman Godfrey have retained include:

- Lukasz Lenart, the lead developer of Apache Struts software, who provides insight into the security flaw in the Apache Struts code, the

effects of Equifax's failure to apply the patch to correct the flaw, and how criminals exploited Equifax's negligence;

- Steven Slater, Ph.D., who offers expert analysis and opinions regarding the industry standard of care for companies entrusted with Personally Identifiable Information;
- Anna Winningham, a former FBI Special Agent, who is now investigating Equifax's failure to identify and remedy its security vulnerability and to respond to the hacking;
- Steven Weisman, who offers expertise in the area of damages caused by identity theft; and
- Bob Zeidman, a software design expert, who provides expertise in code analysis and support in high-tech litigation.

MoloLamken and Susman Godfrey also recruited a leading academic to the team – Anita L. Allen, Henry R. Silverman Professor of Law and Professor of Philosophy and Vice Provost for Faculty at the University of Pennsylvania. Professor Allen is an expert in privacy law and author of a leading privacy law casebook; her expertise adds considerably to the brain trust Mr. Molo has assembled to maximize consumers' recovery in this litigation.

Those efforts demonstrate Mr. Molo's willingness and ability to work cooperatively with co-counsel and opposing counsel, to use resources efficiently, and to seek coordination and compromise where available to advance the litigation.

**III. MR. MOLO AND MOOLAMKEN HAVE SUFFICIENT RESOURCES AND PLANS IN PLACE TO ADVANCE THE LITIGATION IN A TIMELY MANNER**

Equifax's failures have created a *lifelong* risk of identity theft for consumers. Mr. Molo's goal in pursuing litigation against Equifax is therefore to maximize consumers' overall recovery, not simply to achieve a speedy settlement. Mr. Molo is applying to serve on the Consumer Plaintiffs' Steering Committee with full knowledge that – despite the best efforts of plaintiffs' counsel – there is a substantial possibility that achieving the best outcome for consumers will be time consuming and require a substantial commitment of resources.

At MoloLamken, each step of the litigation process – from the filing of a complaint or answer through trial and appeal – is planned and executed using the firm's proprietary project management system. This keeps the firm focused on the tasks that actually advance clients' cases and enables the firm to move more quickly and nimbly than the competition. As *The National Law Journal* reports, MoloLamken's litigation plans help “manage the details, avoid surprises and anticipate legal issues.” *See* App. at 7.

MoloLamken's careful and efficient execution of the litigation process allows it to match up favorably against much larger firms in complex, high-stakes litigation. Over the past few years, MoloLamken's docket has included matters adverse to Cleary Gottlieb, Cooley, Covington, Davis Polk, Fish & Richardson, Gibson Dunn, Jenner & Block, Kaye Scholer, Kirkland & Ellis, Nixon Peabody, Orrick, Paul Weiss, Proskauer, Quinn Emmanuel, Ropes & Gray, Sidley Austin, Simpson Thatcher, Skadden Arps, Williams & Connolly, WilmerHale, and Winston & Strawn, among others. MoloLamken has also had success in civil and criminal matters opposing state and federal government agencies, including the SEC, the United States Department of Justice's Fraud and Public Integrity Sections, the United States Patent and Trademark Office, and various United States Attorneys' Offices.

Mr. Molo is also committed to reducing unnecessary attorneys' and vendors' fees. He believes that the most cost-effective way to handle electronic discovery is to partner with outside vendors – who can provide state-of-the-art technology and systems – rather than have MoloLamken's staff, junior lawyers, or contract attorneys perform the work. Accordingly, Mr. Molo will both draw on a broad range of skills within MoloLamken and on expertise outside the firm from established resources. Additionally, in the interest of efficiency and preventing

unnecessary logging of hours, Mr. Moto will involve other attorneys at MoloLamken with great care, and *only* to the extent it is truly necessary.

Mr. Moto represents that he and MoloLamken have sufficient resources to commit to a potentially time-consuming process and to advance the Equifax litigation as quickly and efficiently as the court's schedule and discovery logistics permit. The attached appendix includes the comprehensive document hold letter served on Equifax, App. at 13-16; the bios of key MoloLamken lawyers available to assist in the representation, App. at 29-45; and a number of articles and testimonials about the work of Mr. Moto and the firm, App. at 1-11; 18-28.

### **CONCLUSION**

Mr. Moto is committed to achieving the best possible outcome for the class. He has the professional experience, the proven ability to work cooperatively with counsel and the Court, and the resources to do so. Mr. Moto respectfully requests that the Court appoint him to represent the interests of the Consumer Plaintiffs as a member of the Plaintiffs' Steering Committee for the Consumer Track.

Dated: February 2, 2018

Respectfully submitted,

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Andrea E. Petrungaro*

**CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 5.1(B)**

I hereby certify that, pursuant to Local Rule 5.1, this APPLICATION is prepared in accordance with LR 5.1(B). Specifically, the brief was prepared in Times New Roman 14-point font, with a top margin of 1.5 inches and all other margins of 1 inch.

This 2<sup>nd</sup> day of February, 2018

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the within and foregoing APPLICATION and APPENDIX were filed via the Court's ECF system, which automatically sends notice of the same to all counsel of record.

This 2<sup>nd</sup> day of February, 2018

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